

Statement of  
Elizabeth Estill  
Deputy Chief, Programs, Legislation and Communications  
Forest Service  
United States Department of Agriculture

Before the

Subcommittee on National Parks  
Senate Energy and Natural Resources Committee  
United States Senate  
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Concerning

S. 546 Paleontological Resources Preservation Act

Mr. Chairman and members of the subcommittee, thank you for the opportunity to be here today. I am Elizabeth Estill, Deputy Chief for Programs, Legislation and Communications, USDA Forest Service. I will provide the Department's comments on S.546, the Paleontological Resources Preservation Act.

During the 107th Congress, the Department supported the purpose of S. 2727; a similar bill also entitled the Paleontological Resources Preservation Act, and provided some recommended changes to the committee staff. I am pleased to see some of the Department's concerns addressed in S.546. The Department supports the purpose of the bill, but we would like to work with the Committee to address some of our other recommendations.

Unified guidelines for paleontological resources management and special protection for vertebrate paleontological resources are greatly needed on National Forest System lands. Forest users, amateurs and scientists alike, are demanding opportunities for recreation, education, interpretation, and the scientific study of fossils. As these legitimate demands increase so does the amount of illegal activity such as theft and vandalism. Therefore, clearly defined, consistent laws and penalties to deter theft and vandalism of fossils from federal lands are also needed.

The Forest Service currently manages paleontological resources under a patchwork of laws that do not specifically address their unique characteristics nor provide adequate management and protection of the resource. These laws include the Organic Administration Act of 1897, the Archaeological Resources Protection Act of 1979, and the Federal Cave Resources Protection Act of 1988. The later statutes only protect paleontological resources when they are associated with archeological resources, or when they occur in caves, respectively.

A consistent statutory framework will enhance overall management of paleontological resources on National Forest System lands. Between 1991 and 1996, one-third of all fossil sites inventoried in the Oglala National Grassland in Nebraska were found to have been vandalized, and as a result, valuable data was lost to science and to the public. In 1996, a case involving fossil theft on National Forest System lands in California, which was prosecuted under civil laws by the Department of Justice and ultimately settled out of court, pointed out the need for more specific statutes and regulations related to the theft of federal fossils.

S. 546 directs the Secretary of the Interior and the Secretary of Agriculture to manage and protect paleontological resources using scientific principles. The bill recognizes the non-renewable nature of fossils and defines paleontological resources as fossilized remains preserved in or on the Earth's crust. This distinguishes these resources from archeological resources, covered under the Archaeological Resources Protection Act (ARPA); cultural items, covered under the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act (NAGPRA); and mineral resources.

If enacted, the bill would establish casual collection provisions including permitting requirements for scientific and educational purposes using uniform and consistent criteria. S. 546 recognizes that paleontological resources are federal property, and that the fossil as well as the associated field data and other records will be preserved and made available to the public. An important aspect of this bill to the Forest Service is its formal recognition of casual collecting of invertebrate and plant fossils for recreational, non-commercial use as a valid public activity on National Forest System lands for which a permit may not be required where the collecting is not inconsistent with the laws governing the management of National Forest System lands and S. 546.

S. 546 provides important uniform criminal and civil penalties for all the federal managing agencies for theft and damage of paleontological resources. Currently, there is a complex mix of laws, regulations and guidelines that have created significant jurisprudential challenges. For example, for the Forest Service, violations of regulations protecting paleontological resources are Class B Misdemeanors, punishable by up to six months imprisonment, or \$5,000 fine, or both. For the Bureau of Land Management, violations are Class A Misdemeanors, punishable by up to one year imprisonment, or \$100,000 fine, or both. The penalties defined in S. 546 are also consistent with recent amendments to the federal sentencing guidelines of the U.S. Sentencing Commission for increased penalties for cultural heritage resources.

S. 546 also provides that the proceeds arising from civil and criminal penalties established under the bill may be available for payment to those who provided information in investigations that lead to the civil violations or criminal convictions for which the penalties were assessed. However, the current reward language in Section 11 provides a maximum reward amount that we believe will be ineffective in most cases. We believe that the appropriate reward amount to be offered or paid for assistance in investigations is best determined by the agency and prosecutor based on the significance of the case and assistance provided or needed. We recommend that references to any dollar amount be removed. Further, the Forest Service currently has differing regulations at 36 CFR 262.1 which regulate the payment of rewards along with other Department of Justice protocols.

Mr. Chairman, paleontological resources, especially vertebrate fossils, are heritage resources. They are evidence of the past history of life on Earth. They provide opportunities for the public to learn more about ancient Earth ecosystems and the development of life from research and study of these resources. The Forest Service is a steward of these heritage resources and is committed to their protection while providing opportunities for research, education, and recreation. The Paleontological Resources Preservation Act would help secure the authority of the Forest Service to manage and protect all paleontological resources on National Forest System lands.

This concludes my statement. I would be happy to answer questions.